

88-242

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

FORTUNATO JOSEPH PADUA, M.D., PETITIONER

advs.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI - CRIMINAL CASE

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QUESTIONS PRESENTED

1. Whether the provisions of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970 on its face and as enforced against petitioner are too vague to meet the safeguarding standards of due process of law in this country?

2. Whether the manner of prosecuting defendant made the task of determining defendant's criminality too confusing for the jury, resulting in defendant being deprived of fundamental fairness at his trial in violation of the Fifth Amendment guarantees of due process?

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IN THE SUPREME COURT OF THE UNITED STATES

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ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI - CRIMINAL CASE

Fortunato Joseph Padua, M.D., your petitioner, prays that a writ of certiorari issue to the United States Court of Appeals for the Fifth Circuit to review the decision of that court affirming his conviction.

OPINIONS BELOW

The judgment and probation/commitment order of the District Court was not

reported. It is reproduced in Appendix A to this petition.

The opinion of the Court of Appeals has not yet been reported. It is reproduced in Appendix A to this petition.

JURISDICTION

The decision of the Court of Appeals (App. A, *infra*, p. 2a) was rendered and entered on May 23, 1983. Rehearing was not sought. The jurisdiction of this Court is invoked under 28 U.S.C. Sect. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

INVOLVED

1. The Fifth Amendment to the United States Constitution provides in relevant part:

"No person shall * * * be deprived of life, liberty, or property, without due process of law * * *."

2. Section 821 of the Comprehensive Drug Abuse Prevention and Control Act of

1970, Pub.L. 91-513, Title II, Sec. 301,
October , 27, 1970, 84 Stat. 1253,
codified at 21 U.S.C. (1970), provided:

• "The Attorney General is
• authorized to promulgate rules and
• regulations and to charge reasonable
• fees relating to the registration and
control of the manufacture,
distribution, and dispensing of
controlled substances."

2. Section 841 of the Comprehensive Drug
Abuse Prevention and Control Act of
1970, Pub.L. 91-513, Title II, Sec. 401,
Oct. 27, 1970, 84 Stat. 1260; Pub.L.
95-633, Title II, Sec. 201, Nov. 10,
1978, 92 Stat. 3774; Pub.L. 96-359, Sec.
8(c), Sept. 26, 1980, 94 Stat. 1194,
codified at 21 U.S.C., provided in
relevant part:

• "(a)Except as authorized by this
• subchapter, it shall be unlawful for
any person knowingly or intentionally
• (1) to manufacture, distribute,
• or dispense, or possess with intent
• to manufacture, distribute, or
• dispense, a controlled substance;"
•

2. Section 802 of the Comprehensive Drug Abuse Prevention and Control Act of 1970, Pub.L. 91-513, Title II, Sec. 102, Oct. 27, 1970, 84 Stat. 1242; Pub.L. 93-281, Sec. 2, May 14, 1974, 88 Stat. 124; Pub.L. 95-633, Title I, Sec. 102(b), Nov. 10, 1978, 92 Stat. 3772; Pub.L. 96-88, Title V, Sec. 509, Oct. 17, 1979, 93 Stat. 695; Pub.L. 96-132, Sec. 16(a), Nov. 30, 1979, 93 Stat. 1049, codified at 21 U.S.C., provided in relevant part:

"(10) The term "dispense" means to deliver a controlled substance to an ultimate user or research subject by, or pursuant to the lawful order of, a practitioner, including the prescribing and administering of a controlled substance and the packaging, labeling, or compounding necessary to prepare the substance for such delivery. The term "dispenser" means a practitioner who so delivers a controlled substance to an ultimate user or research subject."

"(20) The term "practitioner" means a physician, dentist, veterinarian, scientific investigator, pharmacist,

hospital, or other person licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices or does research, to distribute, dispense, conduct research with respect to, administer, or use in teaching or chemical analysis, a controlled substance in the course of professional practice or research."

1. Section 822 of the Comprehensive Drug Abuse Prevention and Control Act of 1970, Pub.L. 91-513, Title II, Sec. 302, October 27, 1970, 84 Stat. 1253, codified at 21 U.S.C. (1970), provided in relevant part:

"(b) Persons registered by the attorney General under this subchapter to manufacture, distribute, or dispense controlled substances are authorized to possess, manufacture, distribute,, or dispense such substances (including any such activity in the conduct of research) to the extent authorized by their registration and in conformity with the other provisions on this subchapter."

1. Section 871 of the Comprehensive Drug Abuse Prevention and Control Act of 1970, Pub.L. 91-513, Title II, Sec. 501,

October 27, 1970, 84 Stat. 1270,
codified at 21 U.S.C. (1970), provided
in relevant part:

"(b) The Attorney General may
promulgate and enforce any rules,
regulations, and procedures which he
may deem necessary and appropriate
for the efficient execution of his
functions under this subchapter."

5. Section 1306.04(a) of the Code of
Federal Regulations provides:

"A prescription for a controlled
substance to be effective must be
issued for a legitimate medical
purpose by an individual practitioner
acting in the usual course of his
professional practice. The respon-
sibility for the proper prescribing
and dispensing of controlled
substances is upon the prescribing
practitioner, * * *."

STATEMENT

1. On May 6, 1982, Fortunato Joseph Padua, M.D., petitioner, was indicted "for violation of Federal Comprehensive Drug Abuse Prevention and Control Act."

A second superseding indictment (App. B, infra, p. 5a) was filed in the United States District Court, Eastern District of Louisiana on June 3, 1982 stating:

"A) On or about the dates hereinafter listed, in the E. D. of Louisiana, petitioner, being a registrant authorized to dispense controlled substances for legitimate medical purposes, knowingly and intentionally, did unlawfully dispense and caused to be dispensed to an ultimate user, the following quantities of drug controlled substances contained in Title 21, United States Code, Section 812 and Title 21, Code of Federal Regulations, Chapter II, Part 1308, as amended; said acts of dispensing and causing dispensations in each instance were not in the usual course of professional practice and were not for a legitimate medical purpose."

Part B of the indictment then listed 59 prescriptions issued by petitioner,

in a one year period, between February 11, 1981 and February 12, 1982, which the indictment alleges were issued

"(a)11 in violation of Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2."

After an eight day trial, the jury, on September 1, 1982, returned a verdict of guilty on all 59 counts of the indictment.

On September 29, 1982, petitioner was sentenced as follows:

"five (5) years on each of counts 4, 8, 12, 15, 17, 22, 24, 26, 33, 38, 40, & 53. Each of said sentences shall be followed by a two (2) year special term of parol. Sentences imposed and special terms of parol shall run concurrently. As to each of the remaining counts, imposition of sentence is suspended and the defendant is placed on probation for a period of five (5) years. Said probationary terms shall run concurrently and shall commence upon the defendant's release from custody under the sentences imposed on counts 4, 8, 12, 15, 17, 22, 24, 26, 33, 38, 40, & 53.

"IT IS FURTHER ORDERED that during

the term of probation the defendant not engage in the practice of medicine as defined by Section 1262 of Title 37 of the revised statutes of the State of Louisiana."

On May 23, 1983 the United States Court of Appeals for the Fifth Circuit affirmed the conviction of petitioner.

The positive laws under which petitioner was convicted are set out below.

Title 21 of the United States Code, Section 841(a)(1) provides in relevant part:

"Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally (1) to * * * dispense * * * a controlled substance."

Under the definitional section of Title 21, Section 802, it is stated that the term "dispense" includes "prescribing." 21 U.S.C. Section 802(10).

The overall scheme of Title 21 is , thus, that it is against the law for a

person to prescribe certain drugs unless he fits into the "except as authorized by this subchapter" phrase.

A search of the referred to subchapter, reveals Section 822(b) which states that persons registered by the Attorney General of the United States to dispense controlled substances are "authorized (to do so) to the extent authorized by their registration and in conformity with the other provisions of this subchapter."

In the definitional section of Title 21, it is stated that the term "practitioner" includes a physician licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices to dispense a controlled substance "in the course of professional practice." 21 U.S.C. Section 802(20).

Two other provisions of the subchapter are 21 U.S.C. Sections 821 and 871(b). Section 821 provides that:

"(t)he Attorney General is authorized to promulgate rules and regulations * * * relating to the * * * control of the * * * distribution and dispensing of controlled substances."

Similarly, Section 871(b) provides that:

"(t)he Attorney General may promulgate * * * regulations * * * for the efficient execution of his functions under this subchapter."

As stated in the House Report accompanying the Controlled Substances Act, the purpose of the Sections of Title 21 empowering the attorney general to promulgate regulations to define more precisely what constitutes authorized dispensing, was to:

"provide guidelines , determined by the principle health agency of the Federal Government, after consultation with appropriate national professional organizations." H.R. Rep. No. 91-1444, 91st Cong., 2nd Sess., U.S.Code Cong. & Admin. News, pp. 4566, 4581 (1970).

Under authority of the above sections of Title 21, the Attorney General promulgated Section 1306.04(a) of the Code of Federal Regulations. This regulation provides:

"A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, * * *."

The phrases "legitimate medical purpose" and "usual course of his professional practice" are nowhere definitionally enlarged upon in positive penal law, other than the statement of legislative intent found in Section 801(a) to the effect that when Congress passed this law it was not Congress's intent to :

interfere with ethical medical practice in this country as determined by the Secretary of Health

and Human Services on the basis of a consensus of the views of the American medical and scientific community."

No positive penal law in this country sets forth a consensus of the views of the American medical and scientific community such as would serve as a standard of conduct to judge the criminality of petitioner's actions in prescribing the drugs he prescribed to undercover agents presenting themselves as patients in his medical office.

"Nullum crimen sine lege" expresses the basic principle of Anglo-American penal law that no conduct may be held criminal unless it is precisely described in penal law. J. Hall, General Principles of Criminal Law 28 (2nd ed. 1960).

This principle is incorporated in the Fifth Amendment of the United States Constitution, which states that no

person shall "be deprived of life, liberty, or property, without due process of law."

It is herein submitted that the conviction and sentence of petitioner deprived him of his liberty and property without due process of law for the reason that there was no positive penal law precisely describing his conduct as criminal. More specifically, it is submitted that the provisions of the Federal Comprehensive Drug Abuse Prevention and Control Act on its face and as enforced against petitioner are too vague to meet the safeguarding standards of due process of law in this country.

The Court of Appeal, Seventh Circuit, has remarked that:

"it is probably true that more precise regulations are desirable as to

what physicians may or may not do with respect to the exception clause of section 841(a)" United States v. Green, 511 F. 2d. 1062, 1070 (7th Cir., 1975).

The lack of preciseness of the Controlled Substances Act, jeopardizes the professional careers of any practitioner prescribing controlled substances, for it allows the criminal prosecution of physicians whose methods of prescribing controlled substances have not conformed to the opinions of Federal prosecutors of what constitutes appropriate methods of professional practice.

2. In the absence of a positive penal law setting forth a precisely described standard of criminality, the trial of petitioner resembled, to the confusion of the jury, the trial of a malpractice

case, that is, a negligence case in tort law. First, the government attempted to establish a standard of good medical practice through the testimony of expert witnesses. Then, the government attempted to show that petitioner's conduct did not meet such standard.

The logical problem with the criminal prosecution of a physician based on a tort standard of conduct is that though the physician's conduct may be shown to be negligent, it is not necessarily criminal. The determination of criminality can be reached only after defendant is found to have exhibited, beyond a reasonable doubt, first, conduct deviating from a precisely described penal standard and, second, that such conduct actually expressed what is termed a "mens rea." It is submitted that this problem in logic

confused not only the government's experts, but also the jury.

A large part of the government's case was the recitation of hypothets paralleling the individual experiences of each one of the several undercover agents, who participated in the investigation of Dr. Padua, without mentioning the agents' names or that of the defendant. At the end of the first lengthy hypothet, which covered no less than twenty-two pages of trial transcript (Tr. Vol. V, pp. 533-555), the Government asked its expert, Dr. F. Brobson Lutz, whether or not he had an opinion as to whether or not those prescriptions described in the hypothet, which concerned indictment counts 1, 5, 6, 9, 10, 19, 20, 26, 27, 28, 29, 30, 31, 32, 36, 41, and 43, were issued "in the usual course of medical practice for

a legitimate medical reason." Dr. Lutz responded succinctly in the negative. (Tr. Vol. V, p. 557).

The government continued to submit hypothets and following each hypothet, the government would ask its expert whether or not in his opinion the hypothets described the issuance of prescriptions in the "usual course of medical practice for a legitimate medical reason." Dr. Lutz, with but one exception, answered said queries in the negative without any explanation. Dr. Lutz rendered twelve such solemn and simple opinions on the government's hypothets. (Tr. Vol. V, pp. 557, 574, 577, 579, 581, 584, 586, 588, 589, 592, 594, and 612.)

The one exception where Dr. Lutz qualified his opinion as to the legitimacy of the hypothetical conduct,

concerned a Darvon prescription which was mentioned in a hypothet, which covered twelve pages of trial transcript and paralleled the facts underlying fourteen separate counts of the indictment, namely counts 2, 7, 8, 14, 15, 24, 25, 37, 38, 39, 40, 44, 45 and 46. The Darvon prescription represented count 45 of the indictment. With respect to this Darvon prescription, Dr. Lutz testified that it was his opinion that said Darvon prescription could have been legitimately issued. In Dr. Lutz's exact words:

"the Darvon prescription could possibly be for medical use, because you can have a back injury with no abnormal physical findings or something, and this is something that's even prescribed -- or this type of medication is sometimes even prescribed by phone just based on the patient giving symptoms. With the exclusion of that, the other (thirteen) prescriptions (described in the hypothet) were not." (Tr. Vol. V, p. 571).

Despite Dr. Lutz's succinct and, with the one exception pointed out above, unqualified responses concerning his opinions as to the illegitimacy of the conduct contained in the government's hypothets, an analysis of Dr. Lutz's testimony, in light of the cross-examination conducted by defendant's counsel, reveals that Dr. Lutz did not realize that he was being asked to give his opinion as to the criminality of the conduct described in the hypothets. It is also apparent that Dr. Lutz did not know if he could draw a line in his mind between merely negligent medical practice and practice that was illegitimate (unlawful, that is, criminal).

Before pointing out the specifics of Dr. Lutz's testimony which reveal the above conclusions, it must be pointed

out that Dr. Lutz had a bias against the anorectic drugs listed in the indictment. That is to say, that although the anorectic drugs are lawfully on the market, that is, the drugs are legitimate, Dr. Lutz testified that he would not use these drugs in his practice of medicine, even if a patient presented himself in Dr. Lutz's office with a chief complaint of a weight condition. (Tr. Vol. V, p. 632). It is pertinent at this time to mention that the government's second expert witness, Dr. John Adriani, also showed this bias when he testified as follows:

"I said I wouldn't prescribe any of these antiappetite drugs for weight control drugs." (Tr. Vol. V, p. 696).

Turning now back to an analysis of Dr. Lutz's testimony, at the outset of his testimony, the government asked Dr. Lutz the following question:

"Q. Would you explain to the jury the procedure that a doctor follows when a new patient comes to him and his problem is diagnosed as a weight problem or a situation where the doctor requires or feels he should lose some weight?" (Tr. Vol. V, p. 516).

It is submitted that Dr. Lutz's answer (Tr. Vol. V, pp. 516-520) to this question merely sets out Dr. Lutz's opinion as to the best procedure a doctor should follow in the situation where a patient presents himself with a chief complaint of a weight condition. It is a tort standard; a standard to be used in a negligence case, a case of medical malpractice. It is submitted that such testimony of Dr. Lutz confused the jury in its duty to judge the criminality of defendant's conduct.

At the first opportunity to qualify his opinions on the hypothets, Dr. Lutz, on cross-examination by counsel for defendant, made the following statement:

"It's hard for me to separate good medical practice from legitimate medical practice and there was certainly many, many indications of extremely poor medical practice. Now, whether that's legitimate or not is another matter, but in my mind the writing of those prescriptions as presented to me was not legitimate medical care." (Tr. Vol. V, p. 615).

It is submitted that the above testimony further shows that Dr. Lutz's opinions rendered in response to the government's hypothets, were merely that the hypothetical doctor's conduct fell below what Dr. Lutz considered to be the standard for good medical practice -- good in the sense of non-negligent. It is further submitted that Dr. Lutz did not have an opinion on the criminality of the hypothetical doctor's conduct because Dr. Lutz did not even know what was the standard for criminality. Moreover, Dr. Lutz was not aware of where he would go to look to find what is criminal and what is not.

The only source of guidance which Dr. Lutz was aware of in regards to the purpose for which the drugs named in the indictment could be prescribed was a book entitled the Physician's Desk Reference, known by its initials as the "P.D.R.." This fact was elicited from Dr. Lutz through the following questioning by counsel for defendant:

"Q. So there's really no place I can go to get a list of standard medical practice is there?"

"A. You can read the indications for the use of the drug in the P.D.R.. Now that's not a bible and that's not absolute, but the way I interpret the indications that the manufacturer recommends -- the person who comes that you described to me, that would not be a proper indication for one of the drugs you mention." (Tr. Vol. V, pp. 637-639).

Dr. Lutz continued his explanation of the nature of the P.D.R. as follows:

"It's a book -- actually all the package inserts are published in one place and it's what the company is required by law to report to the

physician. It does not include all the indications, it does not include all the dosage, even, used by some physicians, but it's a guide to the use of medications. It's not a guide to the use of treating any disease. Although it doesn't tell you how to treat obesity or heart attack in here, it gives you drugs used in different types of conditions and tells you different things about different drugs."

It is submitted that the government's expert showed that the medical profession has no published guidelines indicating a consensus of the views of the American medical and scientific community as to ethical medical practice in regards to the prescribing of the drugs listed in the indictment of defendant.

With relevance to the delineation of a standard of criminal conduct, defendant presented the testimony of Dr. John P. Morgan. The following testimony was elicited from Dr. Morgan by counsel for defendant:

"Q. And, Doctor, if a person appeared at a doctor's office and was asked, if he was there for his diet and he replied, "I'm here for my pills, my diet pills," and he allowed himself to be weighed, he listened to a diet and he allowed the blood pressure to be taken, he talked to the doctor, the doctor asked him his purpose and he agreed that he was there to lose weight, would a doctor--patient relationship arise?"

"A. Yes. You've already described the doctor--patient relationship arising with that interchange.

"Q. Now, in talking about the type of indications that we have been discussing in connection with weight control, would the physical appearance in front of the doctor, taking his weight, his height and his blood pressure, would that be sufficient if the man told you he wanted to lose weight to prescribe a diet and diet pills for a medical purpose?

"A. I would say, yes, particularly in light of the discussion we have just had about observations the doctor would have made as part of that as well.

That kind of procedure you described, although brief, is, indeed, enough of a justification in many instances to prescribe medication." (Tr.Vol. VI, pp.859-860)

In view of the fact that the

defendant's conduct met Dr. Morgan's standard of legitimacy, the conclusion is inescapable that the jury, in finding Dr. Padua guilty, must have been confused as to the issues to be decided by them, namely, to determine if there was criminality in the conduct of Dr. Padua.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

Maurice E. Landrieu

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July 1983

REASONS FOR GRANTING THE WRIT

This court decided in United States v. Moore, Dist. Col. 1975, 96 S.Ct. 335, 423 U.S. 122, 46 L.Ed.2d 333, on remand 540 F.2d 1088, 176 U.S. App.D.C. 309, that there is nothing in the statutory scheme or the legislative history of the Controlled Substances Act that justifies a conclusion that a registrant is per se exempted from prosecution under Section 841, merely because of his status as a registrant.

Conceding that a physician-registrant is not per se exempt from prosecution under Title 21 U.S.C. Section 841, the present case warrants review, as it raises the question whether the provisions of the Comprehensive Drug Abuse Prevention and Control Act of 1970 on its face and as enforced against petitioner are too vague to meet the

safeguarding standards of due process of law in this country.

It is submitted that the terms "legitimate medical purpose" and usual course of professional practice" are terms ". . . so vague that men of common intelligence must necessarily guess as to its meaning and differ as to its application."

Connally v. General Construction Co., 269 U.S. 385, 391, 46 S.Ct. 126, 127, 70 L.Ed. 322 (1926). The Constitution plainly condemns such vagueness, especially in criminal statutes. Smith v. Goguen, 415 U.S. 566, 94 S.Ct. 1242, 39 L.Ed. 2d 605 (1974). One of the principal vices of vagueness in penal statutes is, as here, ". . . the treachery they conceal . . . in determining what persons are included" U.S. v. Cardiff, 344 U.S. 174, 176, 73 S.Ct. 189, 190, 97 L.Ed. 200

(1952).

In view of the fact that petitioner presented evidence at his trial (see esp. Tr. Vol. VI, pp. 859-860) showing that his conduct and procedures, although brief, were enough of a justification to prescribe the medications listed in his indictment, and conceding that Dr. Padua's activities, with the exception of the Darvon prescription described in count 45 of the indictment, deviated from a standard of conduct outlined by the government's experts, who testified at petitioner's trial as to their opinion of what is good medical practice (Tr. Vol. V, pp. 516, 615), it is urged that this court is, nonetheless, sworn to uphold the law, and must reverse Dr. Padua's conviction for the reason that:

"men are not subjected to criminal punishment because their conduct

offends our . . . emotions or thwarts
a general purpose sought to be
effected by specific commands which
they have not disobeyed. Nor are
they to be held guilty of offenses
which the statutes have omitted . . .
to define and condemn. For the
courts are without authority to
regress evil save as the law has
proscribed it and then only according
to law." Viereck v. U.S., 318 U.S.
236, 245, 63 S.Ct. 561, 565, 87 L.
Ed. 734 (1943).

APPENDIX A

THE DECISIONS BELOW

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 82-3593

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FORTUNATO JOSEPH PADUA, M.D.,

Defendant-Appellant.

Appeal from the United States District
Court for the Eastern District of
Louisiana

(May 23, 1983)

Before BROWN, REAVLEY and RANDALL,
Circuit Judges.

PER CURIAM: AFFIRMED. See Rule 21.

(Relevant portions of form AO 245 (5/75)
"JUDGMENT AND PROBATION/COMMITMENT
ORDER")

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF LOUISIANA

NO. CRM. 82-167 "EJB"

UNITED STATES OF AMERICA,

versus

FORTUNATO JOSEPH PADUA, M.D.,

In the presence of the attorney for the government the defendant appeared in person on this date (September 29, 1982) with counsel, Samuel S. Dalton, Esq..

There being a verdict of GUILTY by the Jury on September 1, 1982 on counts 1 through 59.

Defendant has been convicted as charged of the offense(s) of Title 21, U.S.C., Section 841(a)(1) and Title 18,

U.S.C., Section 2, FEDERAL COMPREHENSIVE
DRUG ABUSE PREVENTION AND CONTROL ACT AS
CHARGED IN THE SECOND SUPERSEDING
INDICTMENT.

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of five (5) years on each of counts 4, 8, 12, 15, 17, 22, 24, 26, 33, 38, 40, & 53. Each of said sentences shall be followed by a two (2) year special term of parol. Sentences imposed and special terms of parol shall run concurrently. As to each of the remaining counts, imposition of sentence is suspended and the defendant is placed on probation for a period of five (5) years. Said probationary terms shall run concurrently and shall commence upon the defendant's release from custody under the sentences imposed on counts 4, 8, 12, 15, 17, 22, 24, 26, 33, 38, 40, & 53.

IT IS FURTHER ORDERED that during the term of probation the defendant not engage in the practice of medicine as defined by section 1262 of Title 37 of the revised statutes of the State of Louisiana.

Signed by U.S. District Judge
/s/ Edward J. Boyle, Sr.
Date: September 29, 1982

APPENDIX B

THE INDICTMENT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

SUPERSEDING INDICTMENT FOR VIOLATION OF
FEDERAL COMPREHENSIVE DRUG ABUSE
PREVENTION AND CONTROL ACT

CRIMINAL DOCKET NO. 82-167
SECTION "D"

UNITED STATES OF AMERICA,

versus

FORTUNATO JOSEPH PADUA, M.D.,

VIOLATION: 21 USC section 841(a)(1)
and 18 USC section 2

The Grand Jury charges that:

COUNTS 1 THROUGH 59

A) On or about the dates hereinafter listed, in the Eastern District of Louisiana, FORTUNATO JOSEPH PADUA, M.D., being a registrant authorized to dispense controlled substances for legitimate medical purposes, knowingly and intentionally, did unlawfully dispense and caused to be dispensed to an ultimate user, the following quantities of drug controlled substances contained in Title 21, United States Code, Section 812 and Title 21 Code of Federal Regulations, Chapter II, Part 1308, as amended; said acts of dispensing and causing dispensations in each instance were not for a legitimate medical purpose.

B) All allegations set forth in Paragraph "A" of this Indictment are realleged and included in each of the following Counts as if fully repeated and set forth therein:

COUNT	DATE	CONTROLLED SUBSTANCE	QUAN- TITY	SCHED- ULE
1.	2/11/81	Phentermine (Fastin)	15	IV
2.	2/19/81	Phentermine (Fastin)	15	IV
3.	2/25/81	Phentermine (Adipex)	15	IV
4.	2/25/81	Benzphetamine (Didrex)	15	IV
5.	2/25/81	Phentermine (Fastin)	15	IV
6.	2/25/81	Diazepam (Valium)	20	IV
7.	3/5/81	Phentermine (Adipex)	15	IV
8.	3/5/81	Benzphetamine (Didrex)	15	III
9.	3/10/81	Phentermine (Fastin)	15	IV
10.	3/10/81	Diazepam (Valium)	20	IV
11.	3/10/81	Phentermine (Adipex)	15	IV

COUNT	DATE	CONTROLLED SUBSTANCE	QUAN- TITY	SCHED- ULE
12.	3/10/81	Benzphetamine (Didrex)	15	III
13.	3/10/81	Propoxyphene (Darvon)	15	IV
14.	3/18/81	Phentermine (Adipex)	15	IV
15.	3/18/81	Benzphetamine (Didrex)	15	III
16.	3/23/81	Phentermine (Adipex)	15	IV
17.	3/23/81	Benzphetamine (Didrex)	15	III
18.	3/23/81	Propoxyphene (Darvon)	15	IV
19.	3/26/81	Phentermine (Fastin)	15	IV
20.	3/26/81	Diazepam (Valium)	25	IV
21.	3/26/81	Diazepam (Valium)	25	IV
22.	4/3/81	Benzphetamine (Didrex)	15	III
23.	4/3/81	Propoxyphene (Darvon)	15	IV
24.	4/8/81	Benzphetamine (Didrex)	15	III

COUNT	DATE	CONTROLLED SUBSTANCE	QUAN- TITY	SCHED- ULE
25.	4/8/81	Phentermine (Adipex)	15	IV
26.	4/8/81	Benzphetamine (Didrex)	15	III
27.	4/8/81	Diazepam (Valium)	20	IV
28.	6/17/81	Phentermine (Fastin)	15	IV
29.	6/17/81	Diazepam (Valium)	20	IV
30.	7/9/81	Diazepam (Valium)	20	IV
31.	7/9/81	Phentermine (Fastin)	15	IV
32.	7/9/81	Propoxyphene (Darvon)	12	IV
33.	7/9/81	Benzphetamine (Didrex)	15	III
34.	7/9/81	Phentermine (Adipex)	15	IV
35.	7/9/81	Propoxyphene (Darvon)	12	IV
36.	7/22/81	Phentermine (Adipex)	15	IV
37.	7/24/81	Phentermine (Adipex)	15	IV

COUNT	DATE	CONTROLLED SUBSTANCE	QUAN- TITY	SCHED- ULE
38.	7/24/81	Benzphetamine (Didrex)	15	III
39.	8/6/81	Phentermine (Adipex)	15	IV
40.	8/6/81	Benzphetamine (Didrex)	15	III
41.	8/6/81	Phentermine (Adipex)	15	IV
42.	8/17/81	Phentermine (Fastin)	15	IV
43.	8/19/81	Meprobamate	20	IV
44.	8/20/81	Phentermine (Fastin)	15	IV
45.	8/21/81	Propoxyphene (Darvon)	15	IV
46.	10/2/81	Phentermine (Adipex)	15	IV
47.	10/22/81	Phentermine (Adipex)	15	IV
48.	11/18/81	Phentermine (Adipex)	15	IV
49.	11/18/81	Phentermine (Adipex)	15	IV
50.	11/18/81	Phentermine (Adipex)	15	IV

COUNT	DATE	CONTROLLED SUBSTANCE	QUAN- TITY	SCHED- ULE
51.	11/18/81	Diethylpropion (Tenuate Dospan)	15	IV
52.	11/18/81	Phentermine (Adipex)	15	IV
53.	11/18/81	Mazindol (Sanorex)	15	III
54.	11/18/81	Phentermine (Adipex)	15	IV
55.	11/18/81	Phentermine (Adipex)	15	IV
56.	11/18/81	Phentermine (Adipex)	15	IV
57.	11/18/81	Phentermine (Adipex)	15	IV
58.	1/21/82	Phentermine (Fastin)	15	IV
59.	2/12/82	Phentermine (Fastin)	15	IV

All in violation of Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2.

A TRUE BILL:

FOREMAN

/s/ John Volz
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/s/ Patrick J. Fanning
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New Orleans, La.
June 3, 1982